



STAFF REPORT

DATE: OCTOBER 04, 2011

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: ROD FOSTER, CITY MANAGER

PREPARED BY: AMER JAKHER, PUBLIC WORKS & UTILITY SERVICES DIRECTOR

SUBJECT: ANNUAL ANTICIPATED DISADVANTAGE BUSSINESS ENTERPRISE (DBE) PARTICIPATION LEVEL (AADPL) FOR FEDERAL FISCAL YEAR 2011/2012

RECOMMENDED ACTION

It is recommended that the City Council approve the Annual Anticipated Disadvantaged Business Enterprise (DBE) Participation Level (AADPL) of 15.9% (6.9% Race-conscious, 9.0% Race-neutral) and the methodology that are presented herein; authorize the City Manager or his/her Designee to execute the DBE Annual Submittal Form.

GOAL STATEMENT

The proposed action will support the City's goal to improve traffic circulation and street infrastructure by ensuring compliance with the Federal requirements for federally-funded projects.

BACKGROUND

In 1984, City Council first adopted the Disadvantaged Business Enterprise (DBE) Program as required by 49 CFR Part 26. The program defines disadvantaged businesses and percentage goals for federally funded or assisted public works contracts to be awarded each year. The California Department of Transportation (Caltrans) has been entrusted with local agency oversight responsibility for DBE implementation since 1999, and as such, has the responsibility of overseeing Colton's DBE Program. The DBE Program is intended to remedy past and current discrimination against DBEs, ensure a level playing field, and foster equal opportunity in federal-aid contracts.

On March 4, 2009, Caltrans announced that the Federal Highway Administration had approved a change in the Caltrans DBE Program to move from a race-neutral to a race-conscious program. This change is the result of a disparity study completed by Caltrans in 2007. The study showed that of the six minority business groups included in the Caltrans DBE database, four groups were statistically determined to be underutilized. These four groups, which include African Americans, Asian Pacific Americans, Native Americans, and Women, are designated as Underutilized Disadvantaged Business Enterprises (UDBE). To assist these four groups in achieving their respective participation in federally-funded projects, local agencies receiving federal transportation funds are required to develop an Annual Anticipated DBE Participation

Level (AADPL) that includes both race-neutral and race-conscious portions. Only the race-conscious portion of the overall DBE goal will be specifically targeted by contract requirement. Use of the UDBEs above a contract goal and/or use of DBEs owned and controlled by Hispanic Males or Subcontinent Asian Males shall be reported and counted toward the race-neutral portion of the local agencies' overall AADPL.

ISSUES/ANALYSIS

On May 19, 2009, the City Council approved the Race-Conscious Implementation Agreement with Caltrans. The City is now required to annually submit the AADPL calculation and methodology for Caltrans' approval. The methodology and calculation used to determine the AADPL is outlined in Exhibit 'A' (Local Agency DBE Annual Submittal Form). Public Works staff identified eleven (11) federally-funded transportation projects that are expected to be awarded for construction and preliminary engineering contracts during the 2011/2012 federal fiscal year (October 1, 2011 to September 30, 2012). Those projects are: Barton Road Bridge Replacement Project, Washington/Reche Canyon Intersection Improvement Project, Colton Middle School Safe Route to School Project, Mt. Vernon Bridge/UPRR Widening Project, Washington Street Extension Project and Six (6) Bridge Seismic Retrofit Projects.

To calculate a base figure for both the overall AADPL and the race-conscious portion of the AADPL, the total number of DBEs and UDBEs within each project's market area from the Caltrans DBE database is compared to the total number of businesses (DBE and non-DBE) performing the same services based on information from the US Census Bureau database. The market areas vary by project and were selected by determining the location of the bidders for similar projects within the past several years. Using all eleven (11) individual projects' race-conscious percentage and race-neutral percentage, a weighted average was calculated to determine the City of Colton's AADPL for Federal Fiscal Year 2011/2012. The results of the calculations are as follows:

- Race-Conscious = 6.9%
- Race-Neutral = 9.0%
- AADPL = Race-Conscious % + Race-Neutral % = 15.9%

FISCAL IMPACTS

There is no fiscal impact associated with this recommendation, however, if the DBE goal is not approved, we may become ineligible for federal grants obtained to date as well as future federal grant funding applications.

ALTERNATIVES

1. Provide alternative direction to staff.

ATTACHMENTS

Exhibit A – DBE Annual Submittal Form
Resolution No. R-88-11

EXHIBIT A

EXHIBIT 9-B LOCAL AGENCY DBE ANNUAL SUBMITTAL FORM

TO: CALTRANS DISTRICT 8
District Local Assistance Engineer

The information for exhibit 9-B presented herein, in accordance with Title 49 of the Code of Federal Regulations (CFR), Part 26, and the State of California Department of Transportation Disadvantaged Business Enterprise (DBE) Program Plan.

The City of Colton,
submits our annual 9-B information for the Federal Fiscal Year 2011 / 2012, beginning on October 1, 2011
and ending on September 30, 2012.

Disadvantaged Business Enterprise Liaison Officer (DBELO)

Victor Ortiz, P.E.
Public Works and Utility Services Department
160 South 10th Street
Colton CA 92324
Tel. (909) 370-5065
Fax (909) 370-5072
Email vortiz@ci.colton.ca.us

Planned Race Neutral Measures

The City of Colton is planning to advertise all the projects with local and regional newspaper, and trade journals indicating the DBE requirement of the projects. The City also plans to hold mandatory pre-bid meetings when necessary to ensure compliance with all DBE requirements of the projects.

The City of Colton utilized the 2009 Census Bureau Data, CUCP DBE Directory, and all Federal Funded Projects expected to be completed for FY 2011-2012 to establish the AADPL for Federal Fiscal Year 2011-2012. We have established an AADPL of 15.9% (6.9% Race-conscious; 9.0% Race-neutral (Please see attachment identifying the methodology used to determine the AADPL and calculations to determine the DBE Goal).

Prompt Pay

Federal regulation (49 CFR 26.29) requires one of three methods be used in federal-aid contracts to ensure prompt and full payment of any retainage kept by the prime contractor or subcontractor to a subcontractor. (Attached is a listing of the three methods. On the attachment, please designate which prompt payment provision the local agency will use.)

The City of Colton will use Method 3: The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractors shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors

Prompt Pay Enforcement Mechanism

49 CFR, Part 26.29(d) requires providing appropriate means to enforce prompt payment. These means may include appropriate penalties for failure to comply with the terms and conditions of the contract. The means may also provide that any delay or postponement of payment among the parties may take place only for good cause with the local agency's prior written approval. **Please briefly describe the monitoring and enforcement mechanisms in place to ensure that all subcontractors, including DBEs, are promptly paid.**

The City's monitoring and enforcement mechanisms in- place to ensure that all subcontractors, including DBEs, are promptly paid include the following:

- Establish a contract clause that requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment from the agency.
- Establish a contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes.
- Establish a contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

(Signature)

Date

Amer Jakher P.E., P.W. & Utility Services Director
(Print Name and Title)
ADMINISTERING AGENCY
(Authorized Governing Body Representative)

(909) 370-6132
Phone Number

(Signature of Caltrans District Local Assistance Engineer [DLAE])

Date

Distribution: (1) Original - DLAE
(2) Signed copy by the DLAE – Local Agency

DBE Annual Submittal Form (07/ 1/10)

(Attachment)

Prompt Payment of Withheld Funds to
Subcontractors

Federal regulation (49 CFR 26.29) requires one of the following three methods be used in federal-aid contracts to ensure prompt and full payment of any retainage kept by the prime contractor or subcontractor to a subcontractor.

Please check the box of the method chosen by the local agency to ensure prompt and full payment of any retainage.

Method 1: No retainage will be held by the agency from progress payments due to the prime contractor. Prime contractors and subcontractors are prohibited from holding retainage from subcontractors. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

Method 2: No retainage will be held by the agency from progress payments due the prime contractor. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor in 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

Method 3: The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies otherwise available to the contractor or subcontractor in the event of: a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

AADPL CALCULATIONS

FY 2011/2012

	NAICS CODES		
	#237310 Highway/Bridge	#238210 Electrical	#541330 Engineering Services
(A) Total Establishment Located in Market Area (from CBP table)	279	3393	3124
All UDBE Female Firms Working in Market Area (from CUCP database)	25	11	22
UDBE Female Located in Market Area	19	10	16
All UDBE Male Firms Working in Market Area (from CUCP database)	8	12	37
UDBE Male Located in Market Area	7	11	30
(B) Total UDBE Firms Located in Market Area	26	21	46
Total DBE Firms Working in Market Area (from CUCP database)	72	59	91
(C) Total DBE Firms Located in Market Area (from CUCP database)	61	56	85
(D) Weight	0.691	0.039	0.270

$$\begin{aligned}
 \text{AADPL} = \text{Total DBE Firms} &= \left(\left(\frac{C}{A} \times D \right) + \left(\frac{C}{A} \times D \right) + \left(\frac{C}{A} \times D \right) \right) \times 100 \\
 &= \left(\left(\frac{61}{279} \times 0.691 \right) + \left(\frac{56}{3393} \times 0.039 \right) + \left(\frac{85}{3124} \times 0.27 \right) \right) \times 100 \\
 &= \left(0.1511 \right) + \left(0.0006 \right) + \left(0.0073 \right) \times 100 \\
 &= \mathbf{15.9\%}
 \end{aligned}$$

$$\begin{aligned}
 \text{RACE CONSCIOUS} &= \left(\left(\frac{B}{A} \times D \right) + \left(\frac{B}{A} \times D \right) + \left(\frac{B}{A} \times D \right) \right) \times 100 \\
 &= \left(\left(\frac{26}{279} \times 0.691 \right) + \left(\frac{21}{3393} \times 0.039 \right) + \left(\frac{46}{3124} \times 0.27 \right) \right) \times 100 \\
 &= \left(0.0644 \right) + \left(0.0002 \right) + \left(0.0040 \right) \times 100 \\
 &= \mathbf{6.9\%}
 \end{aligned}$$

$$\begin{aligned}
 \text{RACE NEUTRAL} &= \text{AADPL \%} - \text{Race Conscious \%} \\
 &= 15.91\% - 6.86\% \\
 &= \mathbf{9.0\%}
 \end{aligned}$$

**FY 2011-2012 Annual DBE Submittal
Establishment Located in Market Area
From 2009 County Business Patterns (NAICS)**

Counties	237310	238210	541330
	Highway	Electrical	Engineering
Imperial	4	18	15
Los Angeles	96	1717	1513
Orange	73	802	1107
Riverside	51	476	257
San Bernardino	55	380	232
Total Establishment	279	3393	3124

List of DOT Assisted/Federal Funded Project for FY 11/12

		NAICS Code				
		237310	238210	541330		
		Highway & Bridges	Electrical	Engineering	Total	
1	Colton MS Safe Route to School Project	\$ 350,000.00	\$ 52,000.00			402,000.00
2	Washington/Reche Canyon Int. Improvement	\$ 149,547.00	\$ 175,000.00	\$ 32,453.00		357,000.00
3	Barton Bridge Replacement	\$ 3,535,460.00		\$ 354,000.00		3,889,460.00
4	Mt. Vernon Bridge over UPRR Widening Project			\$ 374,620.00		374,620.00
5	Washington Street Extension			\$ 468,257.00		468,257.00
6-11	Bridge Seismic Retrofit - 6 bridges			\$ 345,951.00		345,951.00
		\$ 4,035,007.00	\$ 227,000.00	\$ 1,575,281.00		\$ 5,837,288.00
			0.691	0.039	0.270	1.000
					Weighted %	

